

VOCATIONAL EDUCATION Q & A

1. What type of vehicles can school districts use to transport students to job sites?

Students may be transported by school bus or by private vehicle. Section 304.060, RSMo, allows students to be transported in vehicles other than school buses. If private vehicles are used, the law requires that no more children are transported than the manufacturer suggests as appropriate for such vehicle.

Most school boards have adopted policies regarding the transportation of students in private vehicles. The standard policy requires that the vehicle be licensed according to law, that the vehicle displays a current safety inspection sticker, that the operator have a valid driver's license, and that the vehicle is covered by liability insurance.

District employees who transport students in private vehicles or in a district owned car, should meet the requirements set out in school board policy for transporting students. District employees authorized to drive school buses must be appropriately licensed for that purpose. To obtain a bus permit an applicant must the following qualifications:

- 1) Has a valid state driver's license;
- 2) Is at least 21 years old;
- 3) Has passed a medical examination, including a vision and hearing test--drivers 70 and older are required to pass an annual medical exam;
- 4) Has successfully passed an examination for the operation of a school bus

For more information please see MSBA policy EEAE, "Student Transportation in Private Vehicles/Common Carriers" or MUSIC/MCE policy and regulation 5661, "Field Trip Transportation in Private Vehicles/Common Carriers" and the following manuals:

Missouri Pupil Transportation Administrative Handbook
Missouri Minimum Standards for School Buses
Missouri Certified Bus Driver Instructor's Manual
Missouri School Bus Procedures Manual

2. What are the liabilities if students are transported in the personal cars of district employees?

Political subdivisions, such as school districts, have sovereign immunity. However, pursuant to section 537.600, RSMo, immunity is waived in the following instances:

- 1) Injuries directly resulting from the negligent acts or omissions by public employees arising out of the *operation of motor vehicles or motorized vehicles within the course of their employment*; and

2) Injuries caused by the condition of a public entity's property if the plaintiff establishes that the property was in dangerous condition at the time of the injury, that the injury directly resulted from the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of harm of the kind of injury which was incurred, and that either a negligent or wrongful act or omission of an employee of the public entity within the course of his employment created the dangerous condition or a public entity had actual or constructive notice of the dangerous condition in sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

Who is liable always hinges on the facts and circumstances surrounding the events that led to the injury. While the school district is protected from liability by sovereign immunity, district employees are not. From time to time school officials should visit with their insurance carrier and/or private attorney regarding issues of liability.

3. Are vocational school programs required to comply with OSHA standards?

OSHA holds that educators should ensure “that school-based work experience programs are within federal and state guidelines. These experiences should also provide information about workers’ legal rights and training in hazard recognition and safe work practices.” It is probably best to presume that workplaces/worksites where students work/intern are subject to OSHA standards.

4. Concerns have been raised about adults convicted of crimes attending vocational programs with high school students. Does the Safe Schools Act apply to the adult students as well?

It’s the Department’s position that the Safe Schools Act continues to apply in these situations. The district should have the authority to remove an adult student who is in violation of the Act subject to board policy.

While we may all agree that allowing high school students to work side-by-side with a felon is not the most desirable situation, school administrators need to be mindful that adults convicted of crimes may be satisfying a probation or parole obligation by attending a voc-ed program. Judges often require those convicted of a crime to perform some sort of service, get a job, or obtain marketable skills. However, unless the district is party to a cause of action, a judge can’t compel attendance at a particular school/program. Finally, the school district or voc-ed center isn’t obligated to enroll an adult who 1) may create a danger to others, and 2) who is no longer entitled to receive a public education. In the end, this is an issue you may want to review with district legal counsel.

5. Are vocational education programs required to serve home schooled students?

Section 167.031, RSMo, Missouri’s compulsory attendance law, allows parents to enroll their child in a school or any combination of schools to obtain an education. Therefore, it’s not in a voc-ed program’s best interests to actively dissuade home schooled students from participating in the program or attending a regional vocational center.

Home schooled students may attend in one of two ways:

- 1) They may enroll in a school district's vocational education program, or
- 2) They may enroll directly into a regional vocational center and pay the required tuition or enrollment fees.

Qualifications for admittance into these programs shouldn't be crafted in such a way that home schoolers are barred from admittance to the program. Vocational centers also shouldn't bill school districts for the attendance of home schoolers that are not officially enrolled in the district's voc-ed program. Districts are only required to pay for those students properly enrolled in the district's program.

6. Can voc-ed students be randomly drug-tested?

Drug tests implicate the Fourth Amendment of the United States Constitution since drug tests are defined as searches. In the last few years, the United States Supreme Court has upheld the drug-testing of students participating in athletics and school-sponsored extracurricular activities. It has not addressed the issue as to student participation in academic and vocational programs. Some private workplaces may require student interns to undergo drug tests as a matter of policy.

The question then becomes whether the drug test, i.e., the search, falls into that category of constitutionally permitted suspicionless searches. Recent case law suggests that courts use a three part "special needs" test to determine whether or not the student drug testing is reasonable. A district must show a 1) diminished expectation of privacy by students, 2) minimal obtrusiveness of testing, and 3) a well-documented and serious problem of drug use by students in the district. Otherwise, without individualized suspicion, the test likely violates the student's right to be free from an unreasonable search. However, it's certainly possible that the "special need" argument may be applied in situations where students regularly engage in safety-sensitive activities such as operating potentially dangerous and/or heavy equipment.

The use of drug tests in the workplace and in schools has generated a fairly large amount of litigation and case law. For this reason, school districts/career centers should consult with private counsel before implementing a student drug testing policy.